

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
CHARLES WALLACE D/B/A PETIT MANAN)	
SEAFOOD FOR A LIMITED-PURPOSE)	FINDINGS OF FACT,
AQUACULTURE LEASE LOCATED IN PINKHAM)	CONCLUSIONS OF LAW
STREAM, STEUBEN, WASHINGTON COUNTY,)	AND DECISION
MAINE)	

On March 13, 2002, Charles Wallace, d/b/a Petit Manan Seafood of Steuben, Maine applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 1.706 acres in the coastal waters of the State of Maine, located in Pinkham Stream, Steuben, Washington County, Maine. The applicant requested the lease for a term of three (3) years for the purpose of cultivating Eastern oysters (Crassostrea virginica) and hard clams (Mercenaria mercenaria) using bottom and suspended culture techniques. The application was accepted as complete on November 6, 2002.

As provided in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on a limited-purpose lease application unless 5 or more persons request a public hearing within the 30-day comment period provided in 12 M.R.S.A. §6072-A(5). Notice of Mr. Wallace's application was published in the April 29, 2003 issue of the *Downeast Coastal Press* newspaper. The applicant, the town of Steuben, riparian owners, and other interested parties were notified by letter dated April 18, 2003. No requests for a hearing were received during the 30-day comment period.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a limited-purpose lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the

site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

In accordance with 12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2), Mr. Wallace submitted an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development on the viability of raising Eastern oysters and hard clams. The applicant requests the maximum lease term of three (3) years. According to the application, the proposed site consists of 2 tracts, totaling 1.706 acres. Tract 1 is 1.649 acres and tract 2 is 0.057 acres.

According to the application, the purpose of the lease activities is to assess the biological, technical and financial feasibility of rearing Eastern oysters from spat to market size and to rear juvenile hard clams from 2mm seed to 6-8 mm seed at the lease location. The applicant proposes to conduct bottom culture in tract 1 and suspended culture in tract 2. According to the application, juvenile oysters and hard clams would be reared in floating ADPI cages at tract 2. There would be a maximum of 100 floating ADPI cages in a double line of fifty cages. (It should be noted that the portions of the lease application with the structure schematics contain a typographical error. The drawings refer to structures that would be placed in tract 1. It should say tract 2, as tract 1 is for bottom culture only.) The cages would be deployed in May or June. The floating cages would be cleaned once or twice a week by flipping the cages or hand scrubbing. Seed oysters would be placed on the bottom at tract 1 when they reach approximately 45 mm shell height. Harvesting of the oysters would be by diver. Juvenile hard clams would be sold to other shellfish growers when they reach 6-8 mm shell height. According to the application, all seed shellfish would be obtained from Maine hatcheries, such as

Pemaquid Oyster Company in Waldoboro, Muscongus Bay Aquaculture in Bremen, or Marshall Point Sea Farm in Port Clyde.

In accordance with Department regulations, Chapter 2.64(2), the applicant provided an environmental characterization of the proposed lease area. According to the application, the bottom of the proposed lease site consists of gravel and rocks at the southern end of tract 1 and silt at the northern end of tract 1 and at tract 2. The maximum water depths are estimated to be 11 feet at low tide and 17 feet at high tide at the southern end of tract 1, 4 feet at the northern end of tract one, and 4 feet at low tide and 6 feet at high tide at tract 2. According to the application, current speed is estimated to be less than 0.5 knots at tract 1 and less than .25 knots at tract 2 and flows in a north/south direction. Resident flora and fauna consist of bay crabs (common), blue mussels (rare) and a variety of Seaweeds and kelp (common) at tract 1, and mud snails, sea fleas and marsh grass at tract 2. According to the application, oysters are filter feeders and therefore no feed will be added. The applicant states in the application that he is aware that the lease area is currently classified as closed for the harvest of shellfish and that he will be required to relay the oysters.

According to the application, the proposed lease activities would not interfere with riparian ingress and egress or navigation. There are no docks or moorings located in the proposed lease area. Tract 1 will not have any structures other than corner buoy markers and therefore will not interfere with navigation. Tract 2 is located in front of the applicant's property and navigation in the area is only by canoe or small skiff. According to the application, the proposed gear in tract 2 would not interfere with navigation of small vessels. Additionally, according to the application, there are no existing fisheries in the lease area. The applicant stated in the application that recreational fishing may be allowed on the lease area.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on April 30, 2003. The AEC created a site report summarizing the information obtained during the site visit. According to the report, tract 1 of the proposed lease site is located on the northern side of the Pinkham Bay Bridge and tract 2 is located

approximately 2,815 feet north of the bridge in the upper reaches of Pinkham Stream. According to the report, there was a slight discrepancy found between the metes and bounds provided in the application and those determined using the application coordinates and POSAID Positioning Software. Therefore, according to the AEC, the correct acreage for the proposed lease site is 1.729 acres. Water depths at tract 1 at Mean High Water (MHW) range from approximately 3 feet in the northern portion of the tract to approximately 15 feet at the extreme southern end of the tract. Water depth at tract 2 at MHW is approximately 3.5 feet.

According to the site report, no docks, moorings or boats were observed in the proposed lease area during the site visit. Tract 1 is proposed for bottom culture and therefore no structures will be present to interfere with riparian access or navigation. Tract 2, according to the report, is located in a shallow, narrow stream directly offshore of the applicant's property, and is surrounded by wetland habitat and thus not conducive to the presence of docks and moorings. Additionally, according to the report, shallow water depths and the 25-foot width of the stream at tract 2 limit vessel traffic to small skiffs, canoes and kayaks. The AEC recommends in his report that the applicant leave a corridor between the floating gear and the eastern shore of the stream for vessel traffic. According to the report, the floating gear will occupy approximately 10 feet of water surface, leaving approximately 10-15 feet for navigation.

No commercial fishing is expected in the proposed lease area, according to the report. Recreational boating and bird watching is expected. According to the site report, the nearest aquaculture lease is located approximately 1.40 miles to the south of the proposed lease site.

According to the report, the proposed lease site is surrounded by marsh and forested uplands. During the site visit several species of waterfowl were observed in the area, including great blue heron, Canada geese, northern pintail ducks, and a kingfisher. According to the report, the applicant indicated that he does not intend to regularly traverse the area between tracts 1 and 2. Rather, he will access tract 2 from his adjacent property and tract 1 primarily from the boat launch located south of the Pinkham Bay Bridge. The Maine Department of Inland Fisheries and Wildlife (IF&W) verbally commented on the proposed lease activities and

expressed two concerns. First, they noted the error in the application referring to floating gear in tract 1. They expressed a concern with the potential impacts of floating structures in tract 1 on waterfowl. They requested that the lease be conditioned that no structures be allowed on tract 1. Additionally, according to the report, IF&W indicated that there is a potential for river otter and muskrat predation of small oysters and requested that the lease be conditioned that the applicant may not seek permission to kill predators.

According to the AEC's report, the proposed lease is located in an area classified as closed/prohibited for the harvest of shellfish by the Department's Water Quality Division. However, according to Robert Goodwin of the Division, testing of the area shows that it meets "restricted for depuration or relay" criteria. According to Mr. Goodwin, it is reasonable to classify the lease area as restricted, therefore allowing the applicant to grow the shellfish on site to market size, then relay the shellfish to an "approved" area for 14 days.

Finally, according to the site report, the proposed activities will not interfere with the use or enjoyment of public facilities. The nearest public facility is a small boat launch located on the southern side of the Pinkham Bay Bridge, approximately 200 feet from tract 1 of the proposed site. The applicant's use of the boat launch will be limited to use for planting and harvesting oysters at tract 1. If necessary, the applicant can access tract 1 via skiff from his property located upstream.

Findings of Fact

The proposed lease is located in the upper reaches of Pinkham Stream, north of Pinkham Bay. Tract 1 of the proposed lease site is located on the northern side of the Pinkham Bay Bridge and tract 2 is located approximately 2,815 feet north of the bridge in the upper reaches of Pinkham Stream. There are no docks or moorings located in the area of the proposed lease site. Tract 1 is proposed for bottom culture and therefore no structures will be present to interfere with riparian access. Tract 2 is located in a shallow, narrow stream, surrounded by wetland habitat and thus not conducive to the presence of docks and moorings.

Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

Due to the shallow water depths, vessel traffic will be limited to kayaks, canoes and small skiffs. Tract 1 is proposed for bottom culture and therefore no structures will be present to interfere with navigation. The width of the stream at tract 2 is approximately 25 feet. The floating gear on tract 2 will occupy approximately 10 feet of water surface, leaving approximately 10-15 feet for navigation. Therefore, I find that the lease will not unreasonably interfere with navigation, as long as the applicant leaves a 10-foot corridor for vessel traffic between the floating gear and the eastern shore of the stream.

No commercial fishing is expected in the proposed lease area. Recreational boating and bird watching is expected. The nearest aquaculture lease is located approximately 1.40 miles to the south of the proposed lease site. The area of the proposed lease is classified as "closed" for the harvest of shellfish, and may be reclassified as "restricted." I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

The bottom of the proposed lease site consists of gravel at tract 1 and silt at tract 2. The current flow is less than 0.5 knots at tract 1 and less than 0.25 knots at tract 2 and runs in a north/south direction. Eastern oysters are filter feeders and therefore no feed or other pollutants will be discharged into the water at the proposed lease site. Resident flora and fauna consist of bay crabs (common), blue mussels (rare) and a variety of Seaweeds and kelp (common) at tract 1, and mud snails, sea fleas and marsh grass at tract 2. The proposed lease site is surrounded by marsh and forested uplands that provide habitat for numerous species of waterfowl. River otters and muskrats may prey on small oysters. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna, provide that no structures are located in tract 1 and the applicant consult with IF&W prior to using any predator controls.

All seed shellfish will be obtained from Maine hatcheries, such as Pemaquid Oyster Company, Muscongus Bay Aquaculture, or Marshall Point Sea Farm. Based on this evidence, I find that there is an available source of Eastern oysters and hard clams.

The proposed lease site is located approximately 200 feet north of a small public boat launch that is located south of the Pinkham Bay Bridge. The applicant will utilize the boat launch to access tract 1 of the proposed lease site when planting and harvesting oysters. Additionally, tract 1 consists of bottom culture only it will not present an interference to navigational access to and from this launch. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. [do you want to say that

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation, provided that the applicant leaves a 10-foot corridor for vessel traffic between the floating gear on tract 2 and the eastern shore of the stream;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna provide that no structures are located in tract 1 and the applicant consult with IF&W prior to using any predator controls;
5. The applicant has demonstrated that there is an available source of Eastern oysters and hard clams to be cultured for the lease site; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 1.729 acres from the date of this decision for the purpose of cultivating Eastern oysters (Crassostrea virginica) and hard clams (Mercenaria mercenaria) using bottom and suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$1,500 if the total square footage of all structures on the lease is less than or equal to 400 square feet or \$5,000 if the total square footage of all structures on the lease is greater than 400 square feet. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. fishing and navigation shall be allowed on the open areas of the lease;
2. all marking shall be in accordance with U.S. Coast Guard and Department of Marine Resources requirements;
3. the applicant shall consult with the Maine Department of Inland Fisheries and Wildlife prior to using any predation control in the lease area;
4. tract 1 shall be used for bottom culture only and shall not contain any structures other than buoys to mark the corners of the lease area; and

5. a 10-foot corridor shall be maintained between the floating gear on tract 2 and the eastern shore of the stream.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources